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CS/HB 631, Engrossed 2

2018 Legislature

1
2 An act relating to the possession of real property;
3 amending s. 66.021, F.S.; authorizing a person with a
4 superior right to possession of real property to
5 recover possession by ejectment; declaring that
6 circuit courts have exclusive jurisdiction; providing
7 that a plaintiff is not required to provide any
8 presuit notice or demand to a defendant; requiring
9 that copies of instruments be attached to a complaint
10 or answer under certain circumstances; requiring a
11 statement to list certain details; providing for
12 construction; amending s. 82.01, F.S.; redefining the
13 terms "unlawful entry" and "forcible entry"; defining
14 the terms "real property," "record titleholder," and
15 "unlawful detention"; amending s. 82.02, F.S.;
16 exempting possession of real property under part II of
17 ch. 83, F.S., and under chs. 513 and 723, F.S.;
18 amending s. 82.03, F.S.; providing that a person
19 entitled to possession of real property has a cause of
20 action to regain possession from another person who
21 obtained possession of real property by forcible
22 entry, unlawful entry, or unlawful detainer; providing
23 that a person entitled to possession is not required
24 to give a defendant presuit notice; requiring the
25 court to award the plaintiff extra damages if a

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26 | defendant acted in a willful and knowingly wrongful
27 | manner; authorizing bifurcation of actions for
28 | possession and damages; requiring that an action be
29 | brought by summary procedure; requiring the court to
30 | advance the cause on the calendar; transferring,
31 | renumbering, and amending s. 82.045, F.S.; conforming
32 | provisions to changes made by the act; amending s.
33 | 82.04, F.S.; requiring that the court determine the
34 | right of possession and damages; prohibiting the court
35 | from determining question of title unless necessary;
36 | amending s. 82.05, F.S.; requiring that the summons
37 | and complaint be attached to the real property after
38 | two unsuccessful attempts to serve a defendant;
39 | requiring a plaintiff to provide the clerk of the
40 | court with prestamped envelopes and additional copies
41 | of the summons and complaint if the defendant is
42 | served by attaching the summons and complaint to the
43 | real property; requiring the clerk to immediately mail
44 | copies of the summons and complaint and note the fact
45 | of mailing in the docket; specifying that service is
46 | effective on the date of posting or mailing; requiring
47 | that 5 days elapse after the date of service before
48 | the entry of a judgment; amending s. 82.091, F.S.;

49 | providing requirements after a judgment is entered for
50 | the plaintiff or the defendant; amending s. 82.101,

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51 F.S.; adding quiet title to the types of future
52 actions for which a judgment is not conclusive as to
53 certain facts; providing that the judgment may be
54 superseded by a subsequent judgment; creating s.
55 163.035, F.S.; defining the term "governmental
56 entity"; prohibiting a governmental entity from
57 adopting or keeping in effect certain ordinances and
58 rules based upon customary use; providing an
59 exception; requiring a governmental entity seeking to
60 affirm the existence of a recreational customary use
61 on private property to follow certain procedures;
62 providing notice requirements for a governmental
63 entity seeking to affirm such recreational customary
64 use; requiring the governmental entity to file a
65 specified complaint with a certain circuit court
66 within a certain time; providing notice requirements
67 for the filing of such complaint; specifying that
68 proceedings resulting from such complaint are de novo;
69 requiring the court to consider specific factors when
70 determining whether a recreational customary use
71 exists; specifying that the governmental entity has
72 the burden of proof; specifying that an owner of a
73 parcel of property subject to the complaint has the
74 right to intervene in the proceeding; providing
75 applicability; repealing s. 82.061, F.S., relating to

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76 service of process; repealing s. 82.071, F.S.,
 77 relating to evidence at trial as to damages; repealing
 78 s. 82.081, F.S., relating to trial verdict forms;
 79 providing an effective date.
 80

81 Be It Enacted by the Legislature of the State of Florida:
 82

83 Section 1. Section 66.021, Florida Statutes, is amended to
 84 read:

85 66.021 Ejectment Procedure.—

86 (1) RIGHT OF ACTION.—A person with a superior right to
 87 possession of real property may maintain an action of ejectment
 88 to recover possession of the property.

89 (2) JURISDICTION.—Circuit courts have exclusive
 90 jurisdiction in an action of ejectment.

91 (3) NOTICE.—A plaintiff may not be required to provide any
 92 presuit notice or presuit demand to a defendant as a condition
 93 to maintaining an action under this section.

94 (4) ~~(1)~~ LANDLORD NOT A DEFENDANT.—When it appears before
 95 trial that a defendant in an action of ejectment is in
 96 possession as a tenant and that his or her landlord is not a
 97 party, the landlord must ~~shall~~ be made a party before further
 98 proceeding unless otherwise ordered by the court.

99 (5) ~~(2)~~ DEFENSE MAY BE LIMITED.—A defendant in an action of
 100 ejectment may limit his or her defense to a part of the property

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101 mentioned in the complaint, describing such part with reasonable
 102 certainty.

103 (6)~~(3)~~ WRIT OF POSSESSION; EXECUTION TO BE JOINT OR
 104 SEVERAL.—When plaintiff recovers in an action of ejectment, he
 105 or she may have one writ for possession and for~~7~~ damages and
 106 costs or, at his or her election ~~if the plaintiff elects, may~~
 107 have separate writs for possession and for damages and costs.

108 (7)~~(4)~~ CHAIN OF TITLE.—The Plaintiff ~~with his or her~~
 109 complaint and the ~~defendant with his or her~~ answer must include
 110 ~~shall serve~~ a statement setting forth, chronologically, the
 111 chain of title upon which the party ~~on which he or she~~ will rely
 112 at trial. Copies of each instrument identified in the statement
 113 must be attached to the complaint or answer. ~~If any part of the~~
 114 ~~chain of title is recorded,~~ The statement must include ~~shall set~~
 115 ~~forth~~ the names of the grantors and the grantees, the date that
 116 each instrument was recorded, and the book and page or the
 117 instrument number for each recorded instrument ~~of the record~~
 118 ~~thereof; if an unrecorded instrument is relied on, a copy shall~~
 119 ~~be attached. The court may require the original to be submitted~~
 120 ~~to the opposite party for inspection. If~~ a the party relies on a
 121 claim or right without color of title, the statement must ~~shall~~
 122 specify how and when the claim originated and the facts on which
 123 the claim is based. If defendant and plaintiff claim under a
 124 common source, the statement need not deraign title before the
 125 common source.

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126 ~~(8)(5)~~ TESTING SUFFICIENCY.—If either party seeks ~~wants~~ to
 127 test the legal sufficiency of any instrument or court proceeding
 128 in the chain of title of the opposite party, the party must
 129 ~~shall~~ do so before trial by motion setting up his or her
 130 objections with a copy of the instrument or court proceedings
 131 attached. The motion must ~~shall~~ be disposed of before trial. If
 132 either party determines that he or she will be unable to
 133 maintain his or her claim by reason of the order, that party may
 134 so state in the record and final judgment shall be entered for
 135 the opposing ~~opposite~~ party.

136 (9) OPERATION.—This section is cumulative to other
 137 existing remedies and may not be construed to limit other
 138 remedies that are available under the laws of this state.

139 Section 2. Section 82.01, Florida Statutes, is amended to
 140 read:

141 82.01 Definitions ~~"Unlawful entry and forcible entry"~~
 142 ~~defined.—As used in this chapter, the term:~~

143 (1) "Forcible entry" means entering into and taking
 144 possession of real property with force, in a manner that is not
 145 peaceable, easy, or open, even if such entry is authorized by a
 146 person entitled to possession of the real property and the
 147 possession is only temporary or applies only to a portion of the
 148 real property.

149 (2) "Real property" means land or any existing permanent
 150 or temporary building or structure thereon, and any attachments

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151 generally held out for the use of persons in possession of the
152 real property.

153 (3) "Record titleholder" means a person who holds title to
154 real property as evidenced by an instrument recorded in the
155 public records of the county in which the real property is
156 located.

157 (4) "Unlawful detention" means possessing real property,
158 even if the possession is temporary or applies only to a portion
159 of the real property, without the consent of a person entitled
160 to possession of the real property or after the withdrawal of
161 consent by such person.

162 (5) "Unlawful entry" means the entry into and possessing
163 of real property, even if the possession is temporary or for a
164 portion of the real property, when such entry is not authorized
165 by law or consented to by a person entitled to possession of the
166 real property ~~No person shall enter into any lands or tenements~~
167 ~~except when entry is given by law, nor shall any person, when~~
168 ~~entry is given by law, enter with strong hand or with multitude~~
169 ~~of people, but only in a peaceable, easy and open manner.~~

170 Section 3. Section 82.02, Florida Statutes, is amended to
171 read:

172 82.02 Applicability ~~"Unlawful entry and unlawful~~
173 ~~detention" defined.—~~

174 (1) This chapter does not apply to residential tenancies
175 under part II of chapter 83 ~~No person who enters without consent~~

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176 ~~in a peaceable, easy and open manner into any lands or tenements~~
 177 ~~shall hold them afterwards against the consent of the party~~
 178 ~~entitled to possession.~~

179 (2) This chapter does not apply to the possession of real
 180 property under chapter 513 or chapter 723 ~~This section shall not~~
 181 ~~apply with regard to residential tenancies.~~

182 Section 4. Section 82.03, Florida Statutes, is amended to
 183 read:

184 82.03 Remedies ~~Remedy for unlawful entry and forcible~~
 185 ~~entry.~~

186 (1) A person entitled to possession of real property,
 187 including constructive possession by a record titleholder, has a
 188 cause of action against a person who obtained possession of that
 189 real property by forcible entry, unlawful entry, or unlawful
 190 detention and may recover possession and damages. The person
 191 entitled to possession is not required to notify the prospective
 192 defendant before filing the action.

193 (2) If the court finds that the entry or detention by the
 194 defendant is willful and knowingly wrongful, the court must
 195 award the plaintiff damages equal to double the reasonable
 196 rental value of the real property from the beginning of the
 197 forcible entry, unlawful entry, or unlawful detention until
 198 possession is delivered to the plaintiff. The plaintiff may also
 199 recover other damages, including, but not limited to, damages
 200 for waste.

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201 (3) Actions for possession and damages may be bifurcated.

202 (4) All actions under this chapter must be brought by
 203 summary procedure as provided in s. 51.011, and the court shall
 204 advance the cause on the calendar ~~If any person enters or has~~
 205 ~~entered into lands or tenements when entry is not given by law,~~
 206 ~~or if any person enters or has entered into any lands or~~
 207 ~~tenements with strong hand or with multitude of people, even~~
 208 ~~when entry is given by law, the party turned out or deprived of~~
 209 ~~possession by the unlawful or forcible entry, by whatever right~~
 210 ~~or title the party held possession, or whatever estate the party~~
 211 ~~held or claimed in the lands or tenements of which he or she was~~
 212 ~~so dispossessed, is entitled to the summary procedure under s.~~
 213 ~~51.011 within 3 years thereafter.~~

214 Section 5. Section 82.045, Florida Statutes, is
 215 transferred, renumbered as section 82.035, Florida Statutes, and
 216 amended to read:

217 82.035 ~~82.045~~ Remedy for unlawful detention by a transient
 218 occupant of residential property.—

219 (1) As used in this section, the term "transient occupant"
 220 means a person whose residency in real property ~~a dwelling~~
 221 intended for residential use has occurred for a brief length of
 222 time, is not pursuant to a lease, and whose occupancy was
 223 intended as transient in nature.

224 (a) Factors that establish that a person is a transient
 225 occupant include, but are not limited to:

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- 226 1. The person does not have an ownership interest,
 227 financial interest, or leasehold interest in the property
 228 entitling him or her to occupancy of the property.
- 229 2. The person does not have any property utility
 230 subscriptions.
- 231 3. The person does not use the property address as an
 232 address of record with any governmental agency, including, but
 233 not limited to, the Department of Highway Safety and Motor
 234 Vehicles or the supervisor of elections.
- 235 4. The person does not receive mail at the property.
- 236 5. The person pays minimal or no rent for his or her stay
 237 at the property.
- 238 6. The person does not have a designated space of his or
 239 her own, such as a room, at the property.
- 240 7. The person has minimal, if any, personal belongings at
 241 the property.
- 242 8. The person has an apparent permanent residence
 243 elsewhere.
- 244 (b) Minor contributions made for the purchase of household
 245 goods, or minor contributions towards other household expenses,
 246 do not establish residency.
- 247 (2) A transient occupant unlawfully detains a residential
 248 property if the transient occupant remains in occupancy of the
 249 residential property after the party entitled to possession of
 250 the property has directed the transient occupant to leave.

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251 (3) Any law enforcement officer may, upon receipt of a
 252 sworn affidavit of the party entitled to possession that a
 253 person who is a transient occupant is unlawfully detaining
 254 residential property, direct a transient occupant to surrender
 255 possession of residential property. The sworn affidavit must set
 256 forth the facts, including the applicable factors listed in
 257 paragraph (1)(a), which establish that a transient occupant is
 258 unlawfully detaining residential property.

259 (a) A person who fails to comply with the direction of the
 260 law enforcement officer to surrender possession or occupancy
 261 violates s. 810.08. In any prosecution of a violation of s.
 262 810.08 related to this section, whether the defendant was
 263 properly classified as a transient occupant is not an element of
 264 the offense, the state is not required to prove that the
 265 defendant was in fact a transient occupant, and the defendant's
 266 status as a permanent resident is not an affirmative defense.

267 (b) A person wrongfully removed pursuant to this
 268 subsection has a cause of action for wrongful removal against
 269 the person who requested the removal, and may recover injunctive
 270 relief and compensatory damages. However, a wrongfully removed
 271 person does not have a cause of action against the law
 272 enforcement officer or the agency employing the law enforcement
 273 officer absent a showing of bad faith by the law enforcement
 274 officer.

275 (4) A party entitled to possession of real property a

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276 ~~dwelling~~ has a cause of action for unlawful detainer against a
 277 transient occupant pursuant to s. 82.03 ~~s. 82.04~~. The party
 278 entitled to possession is not required to notify the transient
 279 occupant before filing the action. If the court finds that the
 280 defendant is not a transient occupant but is instead a tenant of
 281 residential property governed by part II of chapter 83, the
 282 court may not dismiss the action without first allowing the
 283 plaintiff to give the transient occupant the notice required by
 284 that part and to thereafter amend the complaint to pursue
 285 eviction under that part.

286 Section 6. Section 82.04, Florida Statutes, is amended to
 287 read:

288 82.04 Questions involved in this proceeding ~~Remedy for~~
 289 ~~unlawful detention.~~ The court shall determine only the right of
 290 possession and any damages. Unless it is necessary to determine
 291 the right of possession or the record titleholder, the court may
 292 not determine the question of title.

293 ~~(1) If any person enters or has entered in a peaceable~~
 294 ~~manner into any lands or tenements when the entry is lawful and~~
 295 ~~after the expiration of the person's right continues to hold~~
 296 ~~them against the consent of the party entitled to possession,~~
 297 ~~the party so entitled to possession is entitled to the summary~~
 298 ~~procedure under s. 51.011, at any time within 3 years after the~~
 299 ~~possession has been withheld from the party against his or her~~
 300 ~~consent.~~

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301 ~~(2) This section shall not apply with regard to~~
 302 ~~residential tenancies.~~

303 Section 7. Section 82.05, Florida Statutes, is amended to
 304 read:

305 82.05 Service of process ~~Questions involved in this~~
 306 ~~proceeding.~~

307 (1) After at least two attempts to obtain service as
 308 provided by law, if the defendant cannot be found in the county
 309 in which the action is pending and either the defendant does not
 310 have a usual place of abode in the county or there is no person
 311 15 years of age or older residing at the defendant's usual place
 312 of abode in the county, the sheriff must serve the summons and
 313 complaint by attaching them to some conspicuous part of the real
 314 property involved in the proceeding. The minimum amount of time
 315 allowed between the two attempts to obtain service is 6 hours.

316 (2) If a plaintiff causes, or anticipates causing, a
 317 defendant to be served with a summons and complaint solely by
 318 attaching them to some conspicuous part of real property
 319 involved in the proceeding, the plaintiff must provide the clerk
 320 of the court with two additional copies of the summons and the
 321 complaint and two prestamped envelopes addressed to the
 322 defendant. One envelope must be addressed to the defendant's
 323 residence, if known. The second envelope must be addressed to
 324 the defendant's last known business address, if known. The clerk
 325 of the court shall immediately mail the copies of the summons

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326 and complaint by first-class mail, note the fact of mailing in
 327 the docket, and file a certificate in the court file of the fact
 328 and date of mailing. Service is effective on the date of posting
 329 or mailing, whichever occurs later, and at least 5 days must
 330 have elapsed after the date of service before a final judgment
 331 for removal of the defendant may be entered ~~No question of~~
 332 ~~title, but only right of possession and damages, is involved in~~
 333 ~~the action.~~

334 Section 8. Section 82.091, Florida Statutes, is amended to
 335 read:

336 82.091 Judgment and execution.—

337 (1) If the court enters a judgment for the plaintiff, the
 338 ~~verdict is in favor of plaintiff, the court shall enter judgment~~
 339 ~~that~~ plaintiff shall recover possession of the real property
 340 that he or she is entitled to and described in the complaint
 341 ~~with his or her damages and costs. The court, and~~ shall award a
 342 writ of possession to be executed without delay and execution
 343 for the plaintiff's damages and costs.

344 (2) If the court enters a judgment for the defendant, the
 345 court shall ~~verdict is for defendant, the court shall enter~~
 346 ~~judgment against plaintiff dismissing the complaint and order~~
 347 that the defendant recover costs.

348 Section 9. Section 82.101, Florida Statutes, is amended to
 349 read:

350 82.101 Effect of judgment.—No judgment rendered either for

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351 the plaintiff or the defendant bars any action of trespass for
 352 injury to the real property or ejectment between the same
 353 parties respecting the same real property. A judgment is not
 354 conclusive as to ~~No verdict is conclusive of~~ the facts therein
 355 ~~found~~ in any future action for of trespass, ejectment, or quiet
 356 title. A judgment rendered either for the plaintiff or the
 357 defendant pursuant to this chapter may be superseded, in whole
 358 or in part, by a subsequent judgment in an action for trespass
 359 for injury to the real property, ejectment, or quiet title
 360 involving the same parties with respect to the same real
 361 property or ejectment.

362 Section 10. Section 163.035, Florida Statutes, is created
 363 to read:

364 163.035 Establishment of recreational customary use.—

365 (1) DEFINITION.—The term "governmental entity" includes an
 366 agency of the state, a regional or a local government created by
 367 the State Constitution or by general or special act, any county
 368 or municipality, or any other entity that independently
 369 exercises governmental authority.

370 (2) ORDINANCES AND RULES RELATING TO CUSTOMARY USE.—A
 371 governmental entity may not adopt or keep in effect an ordinance
 372 or rule that finds, determines, relies on, or is based upon
 373 customary use of any portion of a beach above the mean high-
 374 water line, as defined in s. 177.27, unless such ordinance or
 375 rule is based on a judicial declaration affirming recreational

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376 customary use on such beach.

377 (3) NOTICE OF INTENT TO AFFIRM RECREATION PUBLIC USE ON
378 PRIVATE PROPERTY; JUDICIAL DETERMINATION.—A governmental entity
379 that seeks to affirm the existence of a recreational customary
380 use on private property must follow the procedures set forth in
381 this subsection.

382 (a) Notice.—The governing board of a governmental entity
383 must, at a public hearing, adopt a formal notice of intent to
384 affirm the existence of a recreational customary use on private
385 property. The notice of intent must specifically identify the
386 following:

387 1. The specific parcels of property, or the specific
388 portions thereof, upon which a customary use affirmation is
389 sought;

390 2. The detailed, specific, and individual use or uses of
391 the parcels of property to which a customary use affirmation is
392 sought; and

393 3. Each source of evidence that the governmental entity
394 would rely upon to prove a recreational customary use has been
395 ancient, reasonable, without interruption, and free from
396 dispute.

397
398 The governmental entity must provide notice of the public
399 hearing to the owner of each parcel of property subject to the
400 notice of intent at the address reflected in the county property

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401 appraiser's records no later than 30 days before the public
402 meeting. Such notice must be provided by certified mail with
403 return receipt requested, publication in a newspaper of general
404 circulation in the area where the parcels of property are
405 located, and posting on the governmental entity's website.

406 (b) Judicial determination.—

407 1. Within 60 days after the adoption of the notice of
408 intent at the public hearing, the governmental entity must file
409 a Complaint for Declaration of Recreational Customary Use with
410 the circuit court in the county in which the properties subject
411 to the notice of intent are located. The governmental entity
412 must provide notice of the filing of the complaint to the owner
413 of each parcel of property subject to the complaint in the same
414 manner as is required for the notice of intent in paragraph (a).
415 The notice must allow the owner receiving the notice to
416 intervene in the proceeding within 45 days after receiving the
417 notice. The governmental entity must provide verification of the
418 service of the notice to the property owners required in this
419 paragraph to the court so that the court may establish a
420 schedule for the judicial proceedings.

421 2. All proceedings under this paragraph shall be de novo.
422 The court must determine whether the evidence presented
423 demonstrates that the recreational customary use for the use or
424 uses identified in the notice of intent have been ancient,
425 reasonable, without interruption, and free from dispute. There

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426 is no presumption regarding the existence of a recreational
 427 customary use with respect to any parcel of property, and the
 428 governmental entity has the burden of proof to show that a
 429 recreational customary use exists. An owner of a parcel of
 430 property that is subject to the complaint has the right to
 431 intervene as a party defendant in such proceeding.

432 (4) APPLICABILITY.—This section does not apply to a
 433 governmental entity with an ordinance or rule that was adopted
 434 and in effect on or before January 1, 2016, and does not deprive
 435 a governmental entity from raising customary use as an
 436 affirmative defense in any proceeding challenging an ordinance
 437 or rule adopted before July 1, 2018.

438 Section 11. Section 82.061, Florida Statutes, is repealed.

439 Section 12. Section 82.071, Florida Statutes, is repealed.

440 Section 13. Section 82.081, Florida Statutes, is repealed.

441 Section 14. This act shall take effect July 1, 2018.